



COMMONWEALTH OF MASSACHUSETTS
THE OFFICE OF THE INSPECTOR GENERAL
and
DIVISION OF CAPITAL ASSET MANAGEMENT

MEMORANDUM

TO: MASSACHUSETTS PUBLIC CONTRACTORS, SUBCONTRACTORS, & DESIGNERS

FROM: Gregory W. Sullivan, Inspector General
David B. Perini, Commissioner, Division of Capital Asset Management

DATE: September 15, 2004

RE: ALERT REGARDING IMPORTANT NEW CONSTRUCTION REFORM LAW

This memo is a joint effort by the Office of the Inspector General (“IG”) and the Division of Capital Asset Management and Maintenance (“DCAM”) to alert you to important new construction reform legislation. On July 19, 2004, Chapter 193 of the Acts of 2004, entitled “*An Act Further Regulating Public Construction In the Commonwealth*” was signed into law. The Act made sweeping revisions to the procurement of public building construction contracts directly impacting the way public awarding authorities may contract for public construction work.

You can access a copy of the new law on the following link to The General Court of Massachusetts’ website: <http://www.mass.gov/legis/laws/seslaw04/sl040193.htm>. As participants in public construction projects in the Commonwealth, you should become familiar with the new law and review it with your counsel.

The reforms enacted were the result of unanimous recommendations from the Special Commission on Public Construction Reform, which was comprised of representatives from state and local government as well as representatives from the design and construction communities. The Special Commission intended that these reforms would promote increased accountability and flexibility and increased competition on public construction projects in the Commonwealth. The major highlights of the new law intended to serve these ends (which are effective immediately unless otherwise indicated) are as follows:

- increases the threshold requiring individual filed sub-bids for designated trade work from \$10,000 to \$20,000;
- increases the threshold for projects requiring filed sub-bids and DCAM contractor certification from \$25,000 to \$100,000;

- requires an owner's project manager for projects valued at \$1.5 million or more;
- requires DCAM certification of subcontractors submitting filed sub-bids after January 1, 2005;
- requires "prequalification" of general contractors and filed sub-bid subcontractors by awarding authorities (on a project-by-project basis) for all projects with estimated construction costs in excess of \$10,000,000;
- provides awarding authorities with the option to utilize the "prequalification" process where estimated construction costs are between \$100,000 and \$10,000,000;
- filed sub-bid subcontractors must furnish payment and performance bonds on projects where prequalification is required or utilized by the awarding authority;
- requires municipal awarding authorities to incorporate an Affirmative Marketing Program with design and construction participation goals for minority business enterprises and women business enterprises (MBE/WBE) on state assisted building projects;
- provides awarding authorities with the option to use CM at Risk on building projects over \$5 million with prior approval from the Office of the Inspector General, effective January 1, 2005;
- subcontractors must furnish payment and performance bonds on CM at Risk projects;
- provides awarding authorities with the option to use Design/Build on non-building public works projects over \$5 million with prior approval from the Office of the Inspector General, effective January 1, 2005;
- modifies the procurement process for building projects with estimated construction costs of \$100,000 or less and separates them into three categories: less than \$10,000; \$10,000 to \$25,000; and \$25,000 to \$100,000;
- allows the designer on municipal projects who conducted the feasibility study to continue with the design of the project without mandatory peer review;
- requires municipalities to utilize the standard designer selection form issued by the Designer Selection Board ("DSB") and the DSB will be providing fee guidelines for use by municipalities.

Given that the majority of the changes proscribed in the new law were made immediately effective on July 19, 2004, the Division of Capital Asset Management and Maintenance (“DCAMM”), the Office of the Inspector General (“IG”) and the Office of the Attorney General (“AG”) have been meeting regularly to develop regulations, policies, procedures and guidelines to assist local jurisdictions in the implementation of the new procurement procedures mandated under the new law. In the near future, we will be providing training, sample documents and other assistance to ensure that current and future projects are completed in a manner consistent with the law.

In the meantime, since the majority of the new law became immediately effective on July 19, 2004, we have compiled a list of “*Frequently Asked Questions*” to address some of the immediate issues. These “FAQs” will be published on both the DCAM and IG websites at www.mass.gov/cam/ and www.mass.gov/ig/, respectively. Please be advised that the posted “FAQs” will be a “live” document with regular updates and you should check our websites frequently for updated information.

Our offices are prepared to facilitate the implementation of these new changes. We look forward to working with you during this exciting time.